

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 6, 2007 at Jackson

DWIGHT BLAKE v. STATE OF TENNESSEE

Appeal from the Circuit Court for Lincoln County
No. S0600086 Robert Crigler, Judge

No. M2007-00558-CCA-R3-PC - Filed December 10, 2007

The defendant, Dwight Blake, appeals the Lincoln County Circuit Court's denial of his petition for post conviction DNA testing.¹ *See* T.C.A. § 40-30-301 (2006). The defendant claims his counsel at trial failed to inform him of the DNA results, and he now requests an opportunity to re-test his DNA results. Finding no abuse of discretion, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL and J.C. McLIN, JJ., joined.

John H. Richardson, Jr., Fayetteville, Tennessee, for the appellant, Dwight Blake.

Robert E. Cooper, Jr., Attorney General and Reporter; Elizabeth T. Ryan, Assistant Attorney General; Charles Crawford, District Attorney General; and Hollyn Hewgley, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On June 18, 2002, the defendant pleaded guilty to one count of rape in the Lincoln County Circuit Court and was sentenced to eight years in prison. On July 26, 2006, the defendant filed a petition for post-conviction DNA analysis pursuant to Tennessee's Post-Conviction DNA Analysis Act of 2001. *See* T.C.A. § 40-30-301 (2006). The defendant was appointed counsel, and a hearing was held on February 6, 2007.

At the hearing, the defendant claimed that although an October 16, 2001 DNA test had been performed and that the results linked him to the rape charge, his attorney did not reveal the results of the test to him before he accepted his guilty plea. He argued that re-testing the DNA would prove his innocence. The State argued that the post-conviction DNA analysis statute does not allow

¹Deoxyribonucleic Acid

for re-analysis of evidence that has already been tested, and that there must be a reasonable probability that analysis will result in a disposition of the case more favorable to the defendant. The court found that the October 16, 2001 DNA test results disqualified the defendant for post-conviction DNA analysis because the evidence had already been examined. Furthermore, the statute of limitations barred all other post-conviction allegations by the defendant. The petition was dismissed. The defendant filed a timely notice of appeal on March 6, 2007.

The Post-Conviction DNA Analysis Act of 2001 applies only to certain enumerated felonies. They are: “[(1)] first degree murder, [(2)] second degree murder, [(3)] aggravated rape, [(4)] rape, [(5)] aggravated sexual battery or rape of a child, [(6)] the attempted commission of any of these offenses, [(7)] any lesser included offense of these offenses, and [(8)] at the direction of the trial judge, any other offense.” T.C.A. § 40-30-303 (2006). The petitioner “may at any time, file a petition requesting the forensic DNA analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution . . . that may contain biological evidence.” *Id.*

The Act provides no statutory time limit and gives petitioners the opportunity to request analysis at “any time,” whether or not such a request was made at trial. *Griffin v. State*, 182 S.W.3d 795, 799 (Tenn. 2006). A post-conviction court is obligated to order DNA analysis when the petitioner has met each of the following four conditions:

- (1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis;
- (2) The evidence is still in existence and in such condition that DNA analysis may be conducted;
- (3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and
- (4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

T.C.A. § 40-30-304 (2006); *see also Griffin*, 182 S.W.3d at 798. Additionally, if DNA analysis would have produced a more favorable verdict or sentence if the results had been available at the proceedings leading up to the conviction or sentence, then the post-conviction court may order DNA analysis when the petitioner meets the same conditions. T.C.A. § 40-30-305 (2006); *see also Griffin*, 182 S.W.3d at 798. In either instance, some physical evidence must be available and in a proper condition to enable DNA analysis. T.C.A. § 40-30-304(2) (2006).

A petitioner's failure to meet any of the qualifying criteria is fatal to the action. *William D. Buford v. State*, No. M2002-02180-CCA-R3-PC, slip op. at 6 (Tenn. Crim. App., Nashville, Apr. 24, 2003). Moreover, the Act does not specifically provide for a hearing as to the qualifying criteria and, in fact, authorizes a hearing only after DNA analysis produces a favorable result. *See* T.C.A. § 40-30-312 (2006).

The post-conviction court has considerable discretion in determining whether to grant relief under the Act, and the scope of appellate review is limited. *See Sedley Alley v. State*, No. W2006-01179-CCA-R3-PC, slip op. at 7 (Tenn. Crim. App., Jackson, June 22, 2006). In making its decision, the post-conviction court must consider all the available evidence, including the evidence presented at trial and any stipulations of fact made by either party. *Id.* The lower court may also consider the opinions of this court and the Tennessee Supreme Court on direct appeal of the petitioner's convictions or the appeals of the petitioner's prior post-conviction or habeas corpus actions. *Id.* On appellate review, this court will not reverse unless the judgment of the lower court is not supported by substantial evidence. *Id.*

In interpreting the scope of the Post-Conviction DNA Analysis Act of 2001, this court has ruled that the Act's reach "is limited to the performance of DNA analysis which compares the petitioner's DNA to . . . biological specimens gathered at the time of the offense." *Sedley Alley*, slip op. at 11. In other words, the Act "does not authorize the trial court to order the victim to submit new DNA samples years after the offense, nor does the statute open the door to any other comparisons the petitioner may envision." *Id.* The Act, at most, creates "a limited interest of a defendant in establishing his/her innocence and [does] not create an interest in establishing the guilt of a speculative and unknown third party." *Id.*

In the instant case, the ruling of the circuit court is supported in law. The defendant is asking for a re-examination of DNA evidence that was previously analyzed in October of 2001. Tennessee Code Annotated section 40-30-304(3) specifically requires that the evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis. The defendant merely requests that the same DNA to be subjected to the same testing that took place in 2001.

Furthermore, the 2001 DNA analysis found the defendant's DNA matched the DNA in question. The results stated that the possibility of an unrelated individual having the same DNA exceeds the current world population. There is no reason to think that new DNA analysis would have produced a more favorable verdict or sentence if the results had been available at trial.

Consequently, we hold that the Tennessee Post-Conviction DNA Analysis Act of 2001 does not authorize the relief sought by the petitioner in this case, and we affirm the post-conviction court's dismissal of the petition.

JAMES CURWOOD WITT JR., JUDGE